A.F.R.

06-09-2006

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

W.P. No.4756 of 2006

PETITIONER V.K. Singh Son of Late Shri S.P. Singh, aged about 29 years, Resident of Qr. No. 8-C, Street No.1, Sector-7, Bhilainagar, District Durg (C.G.)

VERSUS

RESPONDENTS

1. Union of India, Through : The Secretary, Ministry of Human Resources Development, New Delhi

2. University Grant Commission, Through : The Secretary, Bahadaur Shah Zafar Marg, New Delhi - 110002

Present : Shri V.K. Pandey, learned counsel for the petitioner.
Shri Bhishma Kinger, learned counsel for the respondents.

ORAL ORDER
(Passed on 6th September, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

The University Grant Commission, the 2nd respondent herein by issuing Notification F No. 1-1/2002(PS) Exemp., dated 14-06-2006 substituted the following para:

> "NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M. Phil degree in the concerned subject are exempted from NET for UG level teaching only."

in place of the following para:

> "NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil degree or have submitted Ph.D thesis in the concerned subject upto 31st

December, 1993 are exempted from appearing in the NET examination."

The constitutional validity of the substituted provision is assailed in this writ petition. The substituted provision is a piece of delegated legislation made by the 2nd respondent. The validity of a delegated legislation could be assailed only on certain grounds, such as, it is violative of Part III of the Constitution of India or other provisions of the Constitution; it is in excess of the power granted by the parent Act or violative of any of the provisions of the parent Act or the mandatory procedure made by the parent Act with regard to making of delegated legislation was not adhered to by the delegate etc. None of those grounds are urged in this case except contending that the impugned substituted provision violates Article 14 postulates. In other words, as per the learned counsel for the petitioner, the substituted provision is totally arbitrary, unreasonable and it has no nexus with the object to be achieved. On the other hand, it was contended, NET being a relevant classification for any teacher, there was absolutely no good reason for the 2nd respondent to give preference to those holding Ph. D. or M. Phil degree by exempting them from possessing NET qualification as an eligibility criteria for appointment to the post of Lecturers. The power of the 2nd respondent to prescribe and or to amend the prescription of eligibility criteria in terms of age qualification, academic qualification and other qualifications cannot be questioned. In fact that was not questioned in this writ petition. A short question that falls for decision-making is whether the 2nd respondent in classifying the degree holders into two categories, *viz.*, the possessing Ph.D. / M.Phil degrees and the candidates possessing merely postgraduate degrees has violated the equality clause of Article 14 of the Constitution. It is true that the guarantee of equal protection embraces the entire realm of State

action and therefore, in prescribing the educational qualifications, the 2nd respondent is required to adhere to that constitutional obligation, but, at the same time it is well settled by a catena of decisions of the Apex Court that the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different class of persons often require separate treatment. It is also well settled that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a '*well defined class*', it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. In the premise of this well settled position of law, we are of the considered opinion that the candidates having Ph. D. degree / M.Phil degree and the candidates having merely Post Graduate degree could not be regarded as persons belonging to the '*well defined class*' so as to attract the wrath Article 14 postulates. They are different by nature, experience and length of studies too. Therefore, classification made by the 2nd respondent for the purpose of treating them differently could not be condemned as the one which cannot stand the scrutiny of Article 14 of the Constitution. There is discernible rationale behind exempting the candidates having Ph. D. degree and M. Phil degree from acquisition of NET as a prerequisite qualification/eligibility criteria for applying to the post of Lecturers.

In that view of the matter, the contention urged by the learned counsel for the petitioner to assail the constitutional validity of the impugned provision is not acceptable to us and the same is rejected. No

other point was urged before us to condemn the constitutional validity of the impugned provision. The writ petition is devoid of merit and it is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge